

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: May 18, 2005

Division: Public Safety

Bulk Item: Yes X No

Department: Communications

Staff Contact Person: James R. "Reggie" Paros

AGENDA ITEM WORDING: Approval of Entry and Testing Agreement with New Cingular Wireless PCS, LLC, to allow access to the North Key Largo Tower Site to conduct testing prior to negotiating an agreement to lease tower space

ITEM BACKGROUND: Cingular Wireless is interested in leasing space to install a telecommunication facility on the North Key Largo tower. Prior to negotiating an agreement with Monroe County, they are requesting to have access to the site to perform testing and determine the feasibility of the site. The enclosed Entry and Testing Agreement authorizes access to the site for a total of 180 days from the execution date.

PREVIOUS RELEVANT BOCC ACTION: Not applicable

CONTRACT/AGREEMENT CHANGES: This is a new agreement

STAFF RECOMMENDATIONS: Approval

TOTAL COST: \$0.00

BUDGETED: Yes No N/A

COST TO COUNTY: \$0.00

SOURCE OF FUNDS:

REVENUE PRODUCING: Yes No X **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty YES OMB/Purchasing N/A Risk Management YES

DIVISION DIRECTOR APPROVAL:


James R. "Reggie" Paros

5/3/2005

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

4/29

CONTRACT SUMMARY

Contract #

Contract with: New Cingular Wireless PCS Effective Date: Upon execution
Expiration Date: 180 days from Execution Date

Contract Purpose/Description: Entry and Testing Agreement which provides for Cingular to enter property and conduct testing at County-owned Key Largo tower site (CR-905) to conduct due diligence investigation of the property prior to entering into lease negotiations

Contract Manager: James R. Paros 6002 Public Safety Stop 15
(Name) (Ext.) (Department/Stop #)

for BOCC meeting on May 18, 2005 Agenda Deadline: May 3, 2005

CONTRACT COSTS

Total Dollar Value of Contract: \$ n/a Current Year Portion: \$
Budgeted? Yes ☐ No ☐ Account Codes: _____
Grant: \$ _____
County Match: \$ _____

ADDITIONAL COSTS

Estimated Ongoing Costs: \$ _____/yr For: _____
(Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>5/3/2005</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>5/3/2005</u>
Risk Management	<u>4-29-05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>M. Slank</u>	<u>4-29-05</u>
O.M.B./Purchasing	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____	_____
County Attorney	<u>4-29-05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>S. Hutton</u>	<u>4/29/05</u>

Comments: _____

Cell Site Name: _____
Candidate: _____
Site Acq.: _____
Phone Number: _____

ENTRY AND TESTING AGREEMENT

This Entry and Testing Agreement (the "Agreement") is made as of this _____ day of _____ 2005 (the "Execution Date") by and between Monroe County BOCC ("Grantor") and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware a limited liability company, d/b/a Cingular Wireless ("Grantee").

WHEREAS, Grantor is the owner of or holds a leasehold interest in a portion of real property commonly known as North Key Largo Tower Site, City of N/A, County of Monroe, State of Florida (the "Property"); and

WHEREAS, Grantee has an interest in leasing or licensing certain space on the Property as a tower or antenna site, as applicable (the "Site") for purposes of installing, operating and maintaining a communications facility which shall include improvements, including but not limited to, antennas, microwaves, coaxial cables and other equipment thereto; and

WHEREAS, in order for Grantee to determine the viability and feasibility of the Site for Grantee's intended use as a tower or antenna site, it is necessary for employees, agents or independent contractors of Grantee to enter upon and inspect the Property and/or to temporarily locate communications equipment on the Site to conduct short term radio propagation tests; and

WHEREAS, as an accommodation to Grantee, Grantor is willing to permit Grantee, its employees, agents and/or independent contractors to enter onto the Property to conduct such investigations, under the terms and conditions stated herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Grantor grants to Grantee, its contractors, agents, employees and assigns the right to enter upon the Property to conduct and perform all or some of the following activities to determine the feasibility of the Site for use as a tower or antenna site: surveys, geo-technical soil borings and analysis (including, but not limited to, any structural analysis on any existing structure on the Property), Phase I and Phase II environmental audits, boundary surveys, radio propagation studies, which is understood to mean the vertical placement of a radio transmitter by crane, or in the instance where there is an existing tower or building on the Property, on such tower or building, at the height required for potential permanent antenna placement, and such other tests and inspections of the Site which Grantee may deem necessary or advisable (the "Permitted Activities"). Grantee's rights under this Agreement are specifically limited to the Permitted Activities and shall not include any other activities on any other portion of the Property upon which the Site is located. Grantee shall be responsible for any and all costs related to the Permitted Activities, including the installation, operation and removal of equipment on the Site. Grantee's access to the Site shall be coordinated in advance with Grantor and is subject to Grantor's approval. In addition to the foregoing, Grantor consents and agrees that Grantee, its contractors, agents, employees and assigns, shall have the right to make and file applications on Grantor's behalf to such local, state and federal governmental entities

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whose approval Grantee may consider necessary or advisable to have the Property approved as a tower or antenna site, including but not limited to, governmental approvals for zoning variances, rezoning applications, building permits and wetland permits. In the event any governmental agent shall require further documentation, Grantor agrees that it shall execute any such documents to evidence its consent to the action proposed by Grantee.

2. Grantee agrees to comply with all local, state and federal laws, rules and ordinances applicable to the Permitted Activities. Grantee further agrees to exercise due care in the performance of all Permitted Activities on the Site, and to not interfere with Grantor's or any other authorized party's activities on the Site.
3. Grantee shall indemnify and hold harmless Grantor, its employees, agents or contractors, from any and all claims, actions, damages, liability and expense, including without limitation reasonable attorneys' fees and costs in connection with personal injury or property damage arising out of the acts or omissions of Grantee, its employees, agents or independent contractors entering upon the Site under this Agreement. This indemnification obligation shall survive the expiration or termination of this Agreement.
4. At Grantor's request, Grantee agrees to provide a certificate of insurance evidencing the insurance coverage of Grantee and/or its contractors.
5. The Term of this Agreement shall be one hundred eighty (180) days from the Execution Date hereof; provided however, that Grantor may immediately terminate this Agreement in the event that Grantee breaches any term of this Agreement.
6. In the event this Agreement expires or is terminated and the parties have failed to execute a License or Lease for this Site, Grantee will immediately remove any and all of its equipment from the Site and will restore the Site to substantially the condition that existed immediately prior to Grantee's entry thereon, reasonable wear and tear and damage not caused by Grantee excepted.
7. In the event that Grantor is a lessee of the Property, Grantor shall use its best efforts to obtain a consent to this Agreement from the underlying Lessor and any necessary documentation to allow Grantee the ability to perform any of the Permitted Activities on the Property. Furthermore, Grantor shall provide, upon Grantee's request, any existing documentation in Grantor's possession related to the Property including, but not limited to, an existing survey and copies of any existing reports and applications that Grantee deems reasonably necessary.
8. This Agreement constitutes the entire understanding between the parties with respect to the Permitted Activities. All prior agreements or understandings, whether oral or written are superceded. This Agreement may be amended only by a written document duly executed by the parties. This Agreement is governed by the State in which the Site is located.

SIGNATURES CONTAINED ON THE FOLLOWING PAGE

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IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as the date first above written.

Signed, sealed and delivered in the presence of:

Print Name: _____

Print Name: _____

GRANTOR:

By: _____

Name: _____

Title: _____

MONROE COUNTY ATTORNEY

APPROVED AS TO FORM

SUZANNE A. HUTTON

ASSISTANT COUNTY ATTORNEY

Date: 9/25/05

Signed, sealed and delivered in the presence of:

Print Name: Debbie Lewis

Print Name: Anita Brummer

Print Name: Anita Brummer

GRANTEE:

NEW CINGULAR WIRELESS PCS, LLC,

a Delaware limited liability company,

d/b/a Cingular Wireless

By: _____

Name: NIKA NIKSICH

Title: Mgr-Bell Con. Svc.

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